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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,895	03/15/2006	Bodo W. Lambertz	DD-XTS-25043	7202
2387 7590 08/07/2008 Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/563,895

**Applicant(s)**

LAMBERTZ, BODO W.

**Examiner**

Alissa L. Hoey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/30/08 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogden (US 5,708,985).

Ogden teaches the following:

1. (Currently Amended) A sock, in particular for the use with sports activities, that is padded in the treading area and comprises pads (52, 56') in the inner and outer areas of the balls of the foot, in the area of the heel (54'), as well as in the outer instep (36'), and that has intermediate spaces (44, 50) between the pads (52, 56', 54', 36') ,and that the pads (52, 56', 54', 36') are made of fabric and are constructed and arranged to

optimally adapt to the load profile of the foot (see figure 5, any pad would adapt to the load of the pressure applied thereto by a foot). Further, Ogden teaches the pads being directed outwardly from the sock body (see figures 4A-4C illustrated that the pads (36, 37, 38) extend outwardly from the sock body (32)).

2. (Currently Amended) A sock as in claim 1, wherein there is a pad (52) on the ball of the foot in the area of the inner and outer ball, the fabric of which is dissimilar in structure to the fabric of the other pads (see figure 5, identifiers 52 are dissimilar in structure to the other pads),

3. (Previously Presented) A sock as in Claim 2, wherein there the pad (52) on the ball of the foot is made up of multiple sections (see figure 5).

4. A sickles-shaped toe pad (5) arranged in the area of the toes.

5. (Previously Presented) A sock as in Claim 2, wherein there is a sickle-shaped toe pad (56) arranged in the area of the toes (see pads 56 in figure 5).

6. (Previously Presented) A sock as in Claim 3, wherein there is a sickle-shaped toe pad (56) arranged in the area of the toes (see pads 56 in figure 5).

7. (Previously Presented) A sock as in Claim 4, wherein the toe pads (56) are made up of multiple individual pads (51 through 55).

8. (Previously Presented) A sock as in Claim 7, wherein the fabric of the individual pads (56) is dissimilar in structure (see pads 56 in comparison to pads 52: figure 5).

9. (Previously Presented) A sock as in Claim 1, wherein the pads (52, 56) have varying

degrees of firmness, due to the different sizes and shapes.

10. (Previously Presented) A sock as in Claim 4, wherein the pads (52, 56) have varying degrees of firmness, due to the different sizes and shapes.

11. (Previously Presented) A sock as in Claim 5, wherein the pads (52, 56) have varying degrees of firmness, due to the different sizes and shapes.

12. (Currently Amended) A sock as in claim 1, wherein at least one side climate conduit (22, 44, 50) is provided that leads into at least one of the intermediate spaces (44, 50) on the treading area (1) created between the separate pads (2 through (see figures 1-5).

13. (Currently Amended) A sock as in claim 4, wherein at least one side climate conduit (22, 44, 50) is provided that leads into at least one of the intermediate spaces (44, 50) on the treading area (1) created between the separate pads (see figures 1-5).

14. (Currently Amended) A sock as in claim 5, wherein at least one side climate conduit (22, 44, 50) is provided that leads into at least one of the intermediate spaces (44, 50) on the treading area (1) created between the separate pads (see figures 1-5)

15. (Currently Amended) A sock as in claim 10, wherein at least one side climate conduit (22, 44, 50) is provided that leads into at least one of the intermediate spaces (44, 50) on the treading area (1) created between the separate pads (see figures 1-5).

16. (New) A sock, in particular for the use with sports activities, that is padded in the treading area and comprises pads (36', 56', 54') in the inner and outer areas of the balls of the foot (56'), in the area of the heel (54'), as well as in the outer instep (36'), and that has intermediate spaces (44, 50) between the pads (36', 56', 52, 54') wherein

toe pad (5) is located in the area of the toes and is sickle – shaped (56') and that the pads are made of fabric and at least one side climate conduit (area continuing from the intermediate spaces (44 and 50) at the heel (19') and at toe (20') and the top portion of the foot of the sock(see figures 2 and 3 from other embodiment)) is provided that extends along the side of the sock and leads into one intermediate space (44, 50) on the treading area created between the separated pads (figure 5).

17. (New) A sock as in claim 16, wherein there is a pad on the ball of the foot (52) in the area of the inner and outer ball, the fabric of which is dissimilar in structure (see figure 5).

18. (New) A sock as in Claim 16, wherein the toe pads (56) that are made up of multiple individual pads (see figure 5).

19. (New) A sock as in Claim 16, wherein there is a sickle-shaped toe pad (56) arranged in the area of the toes (figure 5).

20. (New) A sock as in Claim 16, wherein the pads (36, 52, 56) have varying degrees of firmness, due to their different shapes and sizes.

21. (New) A sock as in Claim 19, wherein the pads (36, 52, 56) have varying degrees of firmness, due to their different shapes and sizes.

22. (New) A sock as in Claim 17, wherein the pads (36, 52, 56) have varying degrees of firmness, due to their different shapes and sizes.

***Response to Arguments***

4. Applicant's arguments filed 05/30/08 have been fully considered but they are not persuasive.

I) Applicant argues that Ogden fails to teach the pads arranged to optimally adapt to the load profile of the foot.

Examiner disagrees, since the pads of Ogden would adapt to any load applied to them including the load profile of the foot.

II) Applicant argues that Ogden fails to teach the pads extending outwardly from the sock.

Examiner disagrees, since Ogden teaches the pads extending outwardly from the sock body as seen in figures 4A-4C. The claims do not limit the pads extension extending from the outer surface of the sock body.

III) Applicant argues that Ogden fails to teach a climate conduit connected to the intermediate spaces and located on the side of the sock.

Examiner has tried to more particularly point out where the climate conduits are located on the Ogden patent. The climate conduits of Ogden is the area continuing from the intermediate spaces (44 and 50) at the heel (19') and at toe (20') and the top portion of the foot of the sock (see figures 2 and 3 from other embodiment). The claims do not require any structure to the climate conduits as long as they are located along the side of the sock and lead into the intermediate space of the treading area.

### ***Conclusion***

5. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE**

**FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765